

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAMIEN MIKELL	:	CIVIL ACTION
	:	
v.	:	NO. 04-6113
	:	
GERALD ROZUM et al.	:	

ORDER

AND NOW this 24th day of August, 2005, upon consideration of the Petition for a Writ of Habeus Corpus (Doc. No. 1), the Report and Recommendation of United States Magistrate Judge David R. Strawbridge (Doc. No. 11), and all related submissions, it is hereby

ORDERED

1. The Report and Recommendation are **APPROVED** and **ADOPTED**.
2. The Petition is **DENIED**. See Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001) (habeus petitioner must present extraordinary circumstances in order to toll statute of limitations); Jones v. Morton, 195 F.3d 153, 160–61 (3d Cir. 1999) (noting that an action dismissed without prejudice is treated “as if it never existed” for purposes of statutory limitations period); 28 U.S.C. § 2244(d)(1) (imposing one-year limitations period for habeus petitions by state prisoners).
- _____3. A certificate of appealability is not granted.

BY THE COURT.

Paul S. Diamond, J.